

**CITY COUNCIL
ATLANTA, GEORGLA**

A RESOLUTION BY CITY UTILITIES COMMITTEE

01-R-0182

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE NORFOLK SOUTHERN RAILWAY COMPANY FOR THE INSTALLATION, MAINTENANCE, OPERATION AND REMOVAL BY THE CITY OF A WASTEWATER PIPELINE ON RAILWAY PROPERTY

BACKGROUND

WHEREAS, the City of Atlanta ("City") proposes to install, maintain, operate and relocate the existing 9 inch wastewater pipeline in a 20 inch casing pipe under and across the railway tracks of Norfolk Southern Railway Company ("Railway"), at Milepost 635, plus 2,633 feet in Atlanta, Fulton County, Georgia, to be located with any ancillary appurtenances.

WHEREAS, Railway has indicated its willingness to allow the City to install, maintain, operate and remove the pipe and appurtenances pursuant the terms and conditions of the Agreement (or an agreement containing substantially the same terms and conditions)("Agreement") attached to this legislation as Exhibit 1;

WHEREAS, the City has reviewed the Agreement and is willing to enter into this transaction based upon the terms and conditions contained within the Agreement (or an agreement containing substantially the same terms and conditions);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor be, and is hereby, authorized to enter into the Agreement (or an agreement containing substantially the same terms and conditions) with Norfolk Southern Railway Company.

IT IS FURTHER RESOLVED, that the City Attorney is directed to finalize with Railway, or its representatives, the Agreement, for execution by the Mayor, to be approved by the City Attorney as to form.

IT IS FURTHER RESOLVED, that the Agreement will not become binding upon the City and the City will incur no liability under it until the Mayor has executed it, it has been attested to by the Municipal Clerk, and delivered to Railway.

OMC – Amendment Incorporated by tcp 2/27/01

A true copy,

Rhonda Doughtin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
APPROVED by the Mayor

FEB 19, 2001
FEB 24, 2001



EXHIBIT 1



THIS AGREEMENT, made and entered into by and between

NORFOLK SOUTHERN RAILWAY COMPANY, a Virginia corporation,
("Railway"); and

THE CITY OF ATLANTA, a Georgia corporation, ("Licensee"):

W I T N E S S E T H

WHEREAS, Licensee proposes to install, maintain, operate and remove a 9-inch wastewater pipeline in a 20-inch casing pipe, under and across the right of way or property and any tracks of Railway, at Milepost 635 plus 2,633 feet at or near **ATLANTA, Fulton County, Georgia**, to be located with any ancillary appurtenances as shown on print of Drawing marked Exhibit A, dated October 2, 1998, attached hereto and made a part hereof (hereinafter called "Facilities");

NOW, THEREFORE, for and in consideration of the payment of a processing fee of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), and also an annual fee of ONE HUNDRED FIFTY AND 00/100 DOLLARS (\$150.00), payable in advance during the term of this Agreement, and of the covenants made in this Agreement, Railway grants to Licensee, insofar as Railway has the right to do, without warranty and subject to all encumbrances, covenants and easements to which Railway's title may be subject, the right to use and to occupy so much of Railway's property as may be necessary for the Facilities, upon the following terms and conditions:

1. Licensee will construct and maintain the Facilities, at its expense, in such a manner as will not interfere with the operations of Railway or endanger persons or property of Railway, and in accordance with (a) plans and specifications (if any) shown on said print(s) and any other specifications prescribed by Railway, (b) applicable governmental regulations or laws, and (c) applicable specifications adopted by the American Railway Engineering Association when not in conflict with plans, specifications or regulations mentioned in (a) and (b) above.

2. To the extent permitted by the law of the State of Georgia, Licensee hereby agrees to indemnify and save harmless Railway, its officers, agents and employees, from and against any and all liability, claims, losses, damages, expenses (including attorney's fees) or costs for personal injuries (including death) and/or property damage to whomsoever or whatsoever occurring which arises in any manner from the installation, maintenance, operation, presence or removal or the failure to properly install, maintain, operate or remove the Facilities, unless such losses, damages or injuries shall be caused solely by the negligence of Railway.

3. Licensee assumes all responsibility for any environmental obligations imposed under applicable laws, regulations or ordinances relating to the installation of the Facilities and/or to any contamination of any property, water, air or groundwater arising or resulting from Licensee's permitted operations or uses of Railway's property pursuant to this Agreement. In addition, Licensee shall obtain any necessary permits to install the Facilities. To the extent permitted by the law of the State of Georgia,



Licensee agrees to indemnify and hold harmless Railway from and against any and all liability, fines, penalties, claims, demands, costs (including attorneys' fees), losses or lawsuits brought by any person, company or governmental entity relating to contamination of any property, water, air or groundwater due to the use or presence of the Facilities. It is agreed that this indemnity provision extends to any cleanup costs related to Licensee's activities upon Railway's property and to any costs related to cleanup of the Facilities or to other property caused by the use of the Facilities.

4. (a) Prior to commencement of installation or maintenance of the Facilities or entry on Railway's property, Licensee or its contractor shall procure and maintain during the course of said installation or maintenance, a policy of general liability insurance, containing products and completed operations and contractual liability coverage, with a combined single limit of not less than \$1,000,000 for each occurrence. Licensee or its contractor also shall procure and maintain during the course of said installation, maintenance or entry on Railway's property a Railroad Protective Liability Insurance Policy with Railway as the named insured and having a combined single limit of \$2,000,000, each occurrence, and \$6,000,000 in the aggregate. The insurance required will be of such form and content as may be acceptable to Railway. Evidence of such insurance (a certificate of insurance for the general liability insurance policy and the original policy of Railroad Protective Liability Insurance) must be furnished to and approved by Railway's Risk Manager, Norfolk Southern Corporation, Three Commercial Place, Norfolk, Virginia 23510-2191, prior to commencement of installation or maintenance of the Facilities or entry on Railway's property.

(b) The insurance required herein shall not limit the liability assumed by the Licensee under this Agreement.

(c) In lieu of the insurance requirements above, Licensee may provide to Railway a certificate of self-insurance in such amounts and in such form as are satisfactory to Railway.

5. The details of the Facilities to be installed and maintained shall be at the option of Licensee, and subject to the approval of the chief engineering officer of Railway. In case of failure of Licensee to do the work as herein specified, Railway reserves the right to remove the Facilities from Railway's premises at the expense of Licensee, and to terminate this Agreement upon ten (10) days' written notice.

6. If Railway makes any changes, alterations in or additions to the line, grade, tracks, structures, roadbed, installations or works of Railway at or near the Facilities, Licensee will, at its own cost and expense, upon thirty (30) days' notice in writing from Railway, make such changes in the location and character of the Facilities as, in the opinion of the chief engineering officer of Railway, are necessary or appropriate to accommodate any construction, improvements, alterations, changes or additions of Railway.

7. Licensee will notify Railway prior to the installation and placing in service of cathodic protection in order that tests may be conducted on Railway's signal, communications and other electronic systems for possible interference. If the Facilities cause degradation of the signal,



communications or other electronic facilities of Railway, Licensee, at its expense, will relocate the cathodic protection and/or modify the Facilities to the satisfaction of Railway so as to eliminate such degradation. Such modifications may include, without limiting the generality of the foregoing, providing additional shielding, reactances or other corrective measures deemed necessary by Railway. This provision applies to the existing signal, communications and electronic equipment of Railway and to any signal, communications or electronic equipment that Railway may install in the future.

8. If Licensee fails to take any corrective measures requested by Railway in a timely manner or if an emergency situation is presented which, in the Railway's judgment, requires immediate repairs to the facilities, Railway, at Licensee's expense, may undertake such corrective measures or repairs as it deems necessary or desirable.

9. Notwithstanding any other provision of this Agreement, it is understood, agreed and covenanted that Licensee accepts this Agreement as a mere license and assumes all risk of damage to its property by reason of its occupation of the premises herein described caused by any defects therein or business conducted thereon, whether caused by the negligence of Railway, its officers, agents or employees, or otherwise, and to the extent permitted under the law of the State of Georgia, Licensee hereby indemnifies Railway, its officers, agents, and employees, from and against any such liability for said damage.

10. Railway shall furnish, at the cost of Licensee, labor and materials to support its tracks and to protect its traffic during the installation, maintenance, repair, renewal or removal of the Facilities.

11. It is further agreed between the parties that the premises will be used by Licensee only for the Facilities and for no other purpose without the written permission of the chief engineering officer of Railway.

12. No fee adjustment refunds of \$100.00 or less will be made.

13. Licensee shall give Railway seventy-two (72) hours' advance notice (or less in case of emergencies) of any work to be performed on the premises of Railway. Licensee agrees to pay any costs incurred by Railway for the purpose of protection and inspection considered necessary by Railway during installation, maintenance, operation, modification, replacement and/or removal of the Facilities.

14. Licensee shall not assign this Agreement without the written consent of Railway.

15. The word "Railway" as used herein will include any other company whose property at the aforesaid location may be leased or operated by Railway. The term also will include Railway's officers, agents and employees, and any parent company, subsidiary or affiliate of Railway and their officers, agents and employees.

16. This Agreement may be terminated by either party upon sixty (60) days' written notice to the other party. During the sixty day period, Licensee will remove the Facilities from Railway's premises and restore the premises to a condition satisfactory to Railway's chief engineering officer. If Licensee fails to remove the Facilities within the aforesaid sixty day period, Railway may elect: (a) to become the owner of the Facilities without any claim or consideration whatsoever therefor by or to Licensee, its successors or assigns, or (b) to remove the Facilities and all property of Licensee from the premises of Railway at the expense of Licensee. Licensee agrees to reimburse Railway for any and all costs of such removal. No termination of this Agreement shall affect any liability incurred by either party hereto prior to the effective date of such termination.

17. This Agreement shall take effect as of the ____ day of _____, 20____.

The parties hereto have executed this Agreement in duplicate, each part being an original, as of the ____ day of _____, 2000.

Witness:

**NORFOLK SOUTHERN RAILWAY
COMPANY**

As to Railway

By: _____
Title: Real Estate Manager

THE CITY OF ATLANTA

By: _____
Title: Mayor

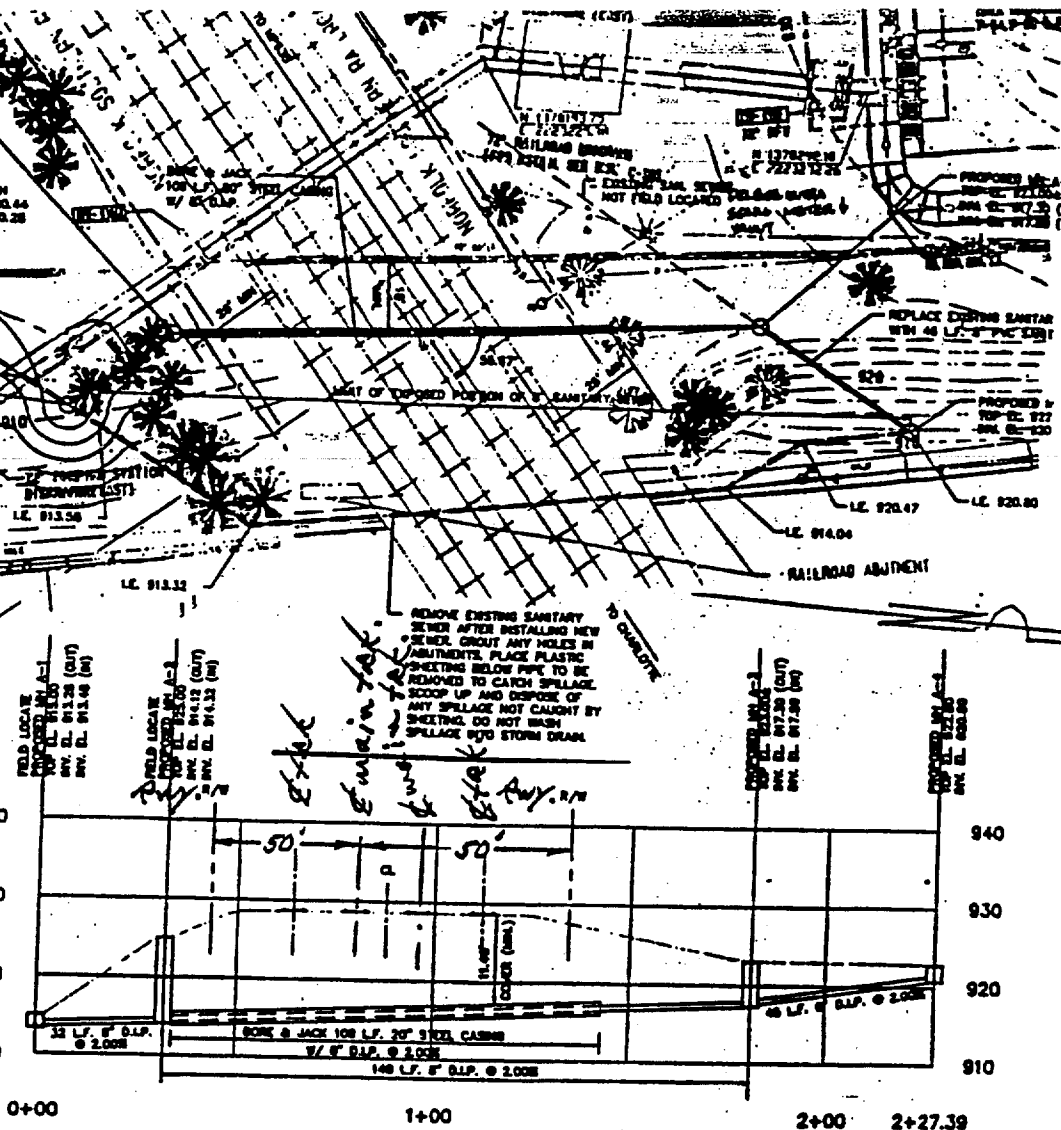
ATTEST:

By: _____
Title: Municipal Clerk (SEAL)

MAL 10/02/98 1022448.wpd plx.wpd

Fulton County, GA
 Val. Sect. 67
 Map No. 14
 Parcel No. 7
 N.Y. Ry. Co.
 Recorded No. 2519

ents to be handled
 ide diameter
 material
 ifications and Grade
 thickness
 d working pressure
 of joint
 ng
 d of installation
 : No. _____ Size _____ Hgt. above ground _____
 Both ends _____ Brick _____ One end _____
 Base of rail to top of casing _____ 11 ft. 4 in.
 (Not beneath tracks) Min. _____ 7 ft. 6 in.
 (Roadway ditches) Min. _____ 3 ft. 0 in.
 dic protection: None
 size and spacing of Insulators or supports. N/A



SEWER PROFILE
 SCALE: 300% (H/V)

BLASTING NOT PERMITTED

NOTE: Applicant's Plan should reflect Actual Field Conditions.

Ch. Eng. File 120-2-581

Pipe Line and Crossing to be installed
 and maintained in accordance with
 latest approved AMERICAN RAILWAY
 ENGINEERING ASSOCIATION'S "Specifications
 for Pipelines for Conveying Flammable and
 Non-flammable Substances".

	Carrier Pipe	Casing Pipe
Waste-Water	N/A	
9.05"	20"	
Iron	Steel	
Grade 60-42-10	ASTM A-139	
0.27"	0.188" 0.244"	
Gravity	N/A	
Push-on	Welded	
Bituminous	None	
	Bore & Jack	

NORFOLK SOUTHERN

EXHIBIT A

OPERATING COMPANY

OFFICE OF CHIEF ENGINEER - DESIGN & CONSTRUCTION
ATLANTA, GA

Atlanta, GA
City of Atlanta-Bureau of Water
2633' East of MP635

October 2, 1998



RCS# 2621
2/19/01
3:24 PM

Atlanta City Council

Regular Session

CONSENT

Pages: 1 thru 13

ADOPT

SEE ATTACHED LISTING OF ITEMS
ADOPTED/ADVERSED ON
CONSENT AGENDA

YEAS: 15
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 0

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	Y Woolard	Y Martin	Y Emmons
Y Bond	Y Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

ITEM (S) REMOVED FROM
CONSENT AGENDA
01-O-0223
01-R-0184

CONSENT

**ITEMS ADOPTED ON CONSENT
AGENDA**

1. 00-O-1619
2. 00-O-2073
3. 01-O-0112
4. 01-O-0069
5. 01-O-0072
6. 01-O-0211
7. 01-O-0213
8. 01-O-0121
9. 01-O-0151
10. 01-O-0098
11. 01-O-0075
12. 01-R-0226
13. 01-R-0191
14. 01-R-0192
15. 01-R-0076
16. 01-R-0194
17. 01-R-0215
18. 01-R-0167
19. 01-R-0198
20. 01-R-0208
21. 01-R-0246
22. 01-R-0070
23. 01-R-0182
24. 01-R-0183
25. 01-R-0158
26. 01-R-0159
27. 01-R-0160
28. 01-R-0161
29. 01-R-0162
30. 01-R-0163
31. 01-R-0164
32. 01-R-0165
33. 01-R-0166

**ITEMS ADVERSED
ON CONSENT AGENDA**

34. 01-R-0169
 35. 01-R-0170
 36. 01-R-0171
 37. 01-R-0172
 38. 01-R-0173
 39. 01-R-0174
 40. 01-R-0175
 41. 01-R-0176
 42. 01-R-0177
 43. 01-R-0195
 44. 01-R-0196
 45. 01-R-0197
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01-*R*-0182

(Do Not Write Above This Line)

A RESOLUTION BY CITY UTILITIES
COMMITTEE

A RESOLUTION AUTHORIZING THE
MAYOR TO EXECUTE AN AGREEMENT
WITH THE NORFOLK SOUTHERN RAILWAY
COMPANY FOR THE INSTALLATION,
MAINTENANCE, OPERATION AND REMOVAL
BY THE CITY OF A WASTEWATER
PIPELINE ON RAILWAY PROPERTY

ADOPTED BY

FEB 19 2001

COUNCIL

AS AMENDED

- ☐ CONSENT REFER
☐ REGULAR REPORT REFER
☐ ADVERTISE & REFER
☐ 1st ADOPT 2nd READ & REFER

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____

Committee *City Utilities*

Date *2-13-01*

Chair *Walter Miller*

Action:

Fav, Adv, Held (see rev. side)

Other:

Members:

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Held (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Held (see rev. side)

Other:

Members

Refer To

Committee

Date

Chair

Action:

Fav, Adv, Held (see rev. side)

Other:

Members

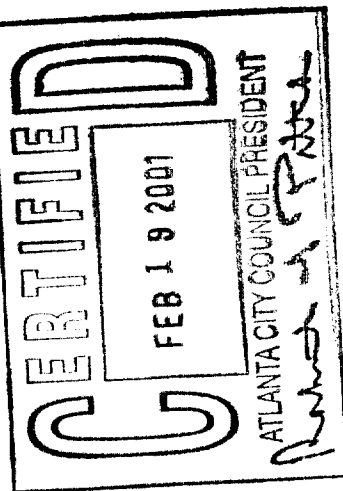
Refer To

COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd ☐ 3rd
Readings

☒ Consent ☐ V Vote ☒ RC Vote

CERTIFIED



CERTIFIED
FEB 19 2001

Shirley D. Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

